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SUPREME COURT U. S.
FILED
JAN 10 1903
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 166. 143.

NORTHERN PACIFIC RAILWAY COMPANY,
vs.
LOUISE H. ADAMS AND FRANK H. ADAMS.

BRIEF IN OPPOSITION TO MOTION THAT THE RECORD HERETOFORE FILED BY THE RAILWAY COMPANY STAND AS THE RETURN TO THE WRIT OF CERTIORARI.

It is submitted that the record now on file in this court in the above entitled cause is both incomplete and uncertain and that the motion by the Northern Pacific Railway Company "that the certified copy of the record herein filed with the petition for certiorari stand as the return to the writ" (p. 4 of railway's motion papers) must be denied.

The conclusive evidence showing the record now filed in this court by the railway company not to be the entire and correct record on which the case was heretofore tried is found in the accompanying affidavit, and in the record itself filed by the said railway.

It would seem, in view of the patent deficiency of the record and the character of the motion made, to wit: "that the certified copy of the record herein filed with the petition for certiorari stand as the return to the writ," that the certainty begotten of direct transmission of the whole and undiminished record from the circuit court of appeals to this court may appropriately be insisted upon.

Respectfully submitted,

C. S. VOORHEES,
REESE H. VOORHEES,
Counsel for Louise H. and Frank H. Adams.

SUPREME COURT OF THE UNITED STATES.

October Term, 1902.

No. 466.

NORTHERN PACIFIC RAILWAY COMPANY,
vs.
LOUISE H. ADAMS AND FRANK H. ADAMS.

STATE OF WASHINGTON,
COUNTY OF SPOKANE. } SS.

C. S. Voorhees, being first duly sworn, upon oath says:—

That he is one of the counsel for Louise H. Adams and Frank H. Adams in the above entitled action in

this court, and has so been at all times since the beginning of said suit in the United States circuit court for the ninth circuit; and replying to the affidavit of Charles W. Bunn, counsel for the above named railway company, in the above entitled cause, filed in support of the said railway's motion, "that the certified copy of the record herein filed with the petition for certiorari stand as the return to the writ" (p. 4 of railway's motion papers), affiant further says that it is not true, as stated by said Charles W. Bunn, that the clerk of the circuit court of appeals of the ninth circuit has informed either this affiant or Reese H. Voorhees, the only counsel or attorneys at any time representing the said Louise H. Adams and Frank H. Adams in this action, "that the record heretofore filed in this court with the petition constituted the entire and correct record," but, on the contrary, affiant asserts the truth to be that said clerk informed said counsel for said Louise H. and Frank H. Adams that the entire and correct record has never been sent out of said circuit court of appeals, and that an entire and correct record has never been, and is not now, filed in this court, and that whatever character of record has been filed in this court, there is certain matter forming a part of the record below omitted therefrom, to-wit: certain exhibits, a true copy of the letter from said clerk giving such information, being attached hereto and made a part hereof as Exhibit "A." That the exhibits so affirmatively shown to be omitted from the record were, many of them, not set out at length in the

printed record used in the court below, but were referred to in said printed record, and were sent to and received, held and used by the court below as a part of the record in said action. That some of said exhibits were a large map of said railroad, a photograph of the place of the killing, a diagram, a train sheet, a time card or running schedule, a finger ring, etc., etc., those named, if the record now filed in this court is the part of the record which was printed in the court below, are referred to on the following pages thereof, to-wit: pages 298-308, 798, 204, 514-519, 258-259, 211, but are not set out therein, and are, together with other exhibits, still in possession of the said clerk of the circuit court of appeals.

This affiant further says that it is true that the said clerk, after disclosing the incomplete state of the record as sent from his office, and that he did not know of his own knowledge the character of the record actually filed in this court, since such record was not sent to this court by said clerk, but was mailed by him to the said railway company (Exhibit "A"), wrote subsequently to said counsel for said Louise H. and Frank H. Adams, after correspondence with the said Charles W. Bunn, that "the entire record was heretofore certified and used in the Supreme Court on the application for the writ of certiorari" (a true copy of said letter being annexed hereto as Exibit "B"), but affiant says that the prior information given by said clerk showing want of actual knowledge by said clerk as to what was actually filed in this court (irrespective of the omitted exhibits), made it highly disregardful of the care and protection said

counsel for Louise H. and Frank H. Adams owe their said clients, in the absence of certain knowledge of their own as to the character of the record filed by the said railway company, for said counsel to stipulate as to the sufficiency thereof.

And further affiant saith not.

C. S. VOORHEES.

Subscribed and sworn to before me this third day of January, 1903.

(Notarial Seal)

FRED. C. PUGH,
Notary Public in and for the state of Washington, residing at Spokane, Wash.

Exhibit A.

Office of the Clerk
U. S. CIRCUIT COURT OF APPEALS,
San Francisco.
FRANK D. MONCKTON, Clerk.

15 Nov., 1902.

Messrs. VOORHEES & VOORHEES,
Attorneys at Law,
Spokane, Wn.

DEAR SIRS:

Replying to yours of the 11th instant will state that the record heretofore mailed to counsel for the plaintiff in error in case of Northern Pacific Railway Co. v. Adams

et al., No. 707 here, was a certified copy of the entire printed record, together with the opinion and judgment of this court, all duly certified. The exhibits are still in my custody, but they will be forwarded to the clerk of the Supreme Court of the United States when I make return to the writ of certiorari.

Very truly yours,

F. D. MONCKTON,
Clerk.

Exhibit B.

Office of the Clerk
U. S. CIRCUIT COURT OF APPEALS,
San Francisco.
FRANK D. MONCKTON, Clerk.

2 Decr., 1902.

Messrs. VOORHEES & VOORHEES,
Attorneys at Law,
Spokane, Washington.

DEAR SIRS:

I am in receipt of a letter from Mr. C. W. Bunn, relative to my return to the writ of certiorari in Northern Pacific Railway Company v. Adams et al., and have suggested to Mr. Bunn that, inasmuch as you recently wrote me in regard to the record heretofore certified, you would probably be willing to stipulate that the record now on file in the Supreme Court be considered the record in the case and that my office could make return

to the writ by annexing thereto a certified copy of the stipulation of counsel referred to. The entire record was heretofore certified and used in the Supreme Court on the application for the writ of certiorari. If I re-certify the record as a return to the writ it would simply be a duplication of the record already on file with the clerk of the Supreme Court, and unnecessary.

I trust you will pardon the foregoing, but the procedure referred to has become the practice in this, and I think all circuit courts of appeals.

Very truly yours,

F. D. MONCKTON,
Clerk.